

# EXECUTIVE SUMMARY

## INTRODUCTION

**T**his publication presents the findings of an Asian Development Bank multi-country study on legal identity. Based on extensive field research conducted in Bangladesh, Cambodia, and Nepal, the study assesses the potential and actual value of legal identity, given the realities of the developing country context.

Broadly speaking, “legal identity” refers to a human being’s legal (as opposed to physical) personality. Legal identity allows persons to enjoy the legal system’s protection and to enforce their rights or demand redress for violations by accessing state institutions such as courts and law enforcement agencies. Proof of legal identity consists of official, government-issued and recognized identity documents—documents that include basic information attesting to the holder’s identity and age, status, and/or legal relationships. Without these proofs of one’s legal identity, persons find it difficult to exercise and enforce their rights, or obtain benefits and opportunities provided by the state. Consequently, “legal identity” can be construed narrowly to refer to official, government-issued identity documents that prove one’s status as a person who can exercise rights and demand protection under the law.

Generally, birth certificates, administered through a civil registration system, are favored as the preferred standard in establishing legal identity. This is primarily because birth certificates have the advantage of documenting age, place of birth, and familial relationships from the very beginning of life.

However, the study shows that in a number of instances, other identity documents, such as citizenship certificates or family and lodging books, proved to be more important than birth certificates in so far as access to benefits and opportunities are concerned. In light of these realities, rather than narrowly focusing on birth certificates, the research commenced with a review of the range of identity documents that are used in the three

Birth registration rates in Bangladesh are reportedly between 7-10% of the population. Cambodia has seen a recent surge in birth registration rates. It is estimated that birth certificates have been distributed to over 90% of the population. In Nepal even the most optimistic estimates put the registration rate at only 35%, with the Population Registrar himself estimating the number closer to 15%. Empirical research has demonstrated that registration rates are lowest in rural areas and among the uneducated and those living in poverty.



countries and looking at what functions these documents actually serve in people's lives.

## LEGAL IDENTITY: WHAT IT PROMISES AND WHAT IT DELIVERS

**T**he key question that guided the research is: Does legal identity matter in people's day-to-day lives? Legal identity clearly provides official, state recognition of an individual's existence, which is important in

its own right, and as such embedded in the Convention on the Rights of the Child. Legal identity also clearly has potential implications for a large and diverse range of issues—from access to education and utilities, to sitting for a civil service exam, to enforcing

inheritance rights, and even promoting development of small and medium enterprises.

However, less obvious are the answers to questions such as: What can legal identity realistically deliver in terms of promoting social and economic inclusion? How, when, and under what circumstances does legal identity actually improve lives in concrete and meaningful ways?

The study explores these questions, looking specifically at the connections between legal identity and three categories of goods or advantages that are often associated with civil registration documents: (a) the promotion of access to benefits and opportunities, (b) the protection of human rights, and (c) the generation of demographic statistics for development planning.

In general, the research findings are mixed. As the publication demonstrates, the evidence indicates that in reality these connections are not always as strong or as direct as they are assumed to be.

## PROVIDING ACCESS TO BENEFITS AND OPPORTUNITIES

Legal identity may be needed to secure a broad range of benefits and opportunities such as access to education, health care, and other social services. Other benefits often linked to legal identity include professional credentials, bank accounts and credit, land and business registration, government employment, and permission to travel and work abroad. If legal identity is essential to accessing these benefits and opportunities, then we would expect that vulnerable groups with formal identity documents would enjoy a higher quality of life compared to others who are similarly situated, but do not have formal legal identity.

The research, however, points out several factors that diminish the ability of legal identity to enhance access to these and other opportunities:

- For legal identity to enhance access to benefits and opportunities, such services, benefits, and opportunities must actually exist. Unfortunately, in Bangladesh, Cambodia, and Nepal, these opportunities tend to be remote for the vast majority of the population, who rely on agriculture and the informal economy for their livelihoods.
- While legal identity can provide some benefits to vulnerable groups and, indeed, may be a prerequisite to accessing these benefits, such groups often face other fundamental economic, political, and social obstacles that prevent them from accessing benefits and opportunities, regardless of whether or not they have identity documents. Further, insisting on legal identity requirements for accessing

Legal identity may be needed to secure a broad range of benefits and opportunities ranging from access to education, to land and business registration, to getting a utility connection and obtaining passports.

services could have the unintended effect of further excluding the most marginalized because these groups may face serious impediments in obtaining legal identity.

- Legal identity can only be a key factor in providing access to benefits and opportunities to the extent that laws, policies, and practices make the provision of benefits strictly contingent on the possession of a birth certificate and less formalized alternatives that are more accessible are not available. In the three countries included in the research, the government did not always make access to benefits and opportunities contingent upon providing a birth certificate. Officials often accepted a variety of less formal substitutes, thereby reducing the direct link between birth certificates and access to benefits and opportunities.

Nevertheless, initiatives to improve birth registrations remain relevant. In efforts to comply with their obligations under the Convention on the Rights of the Child, many countries are introducing policies that link legal identity and access to basic services. As countries develop and governments improve their capacity to provide basic services, these policies will make vital registration documents increasingly valuable. Moreover, as birth registration or citizenship certificates are often required for more sophisticated benefits and opportunities such as the capacity to register and transfer land, set up a busi-

**Vital registration will become increasingly relevant as countries develop their capacity to provide services as economies grow, and regional economic integration deepens.**

ness, or open a bank account, birth registration is linked to economic growth and development. A functioning and nondiscriminatory registration system supports regional economic integration and aids countries that, to some degree, rely on remittances from overseas contract workers, as it provides passports that enable these workers to travel to their place of employment.

### PROTECTING HUMAN RIGHTS

At the time the research commenced, most of the literature on legal identity highlighted the important role that birth certificates played in protecting human rights, especially child rights. Age is an element in a wide range of laws seeking to protect children from exploitation and abuse, either by the state (juvenile justice and due process requirements), in the economy (child labor laws), or in the private sphere (laws banning child marriages or criminalizing child abuse). Such laws are often violated with impunity.

Though international organizations stress that birth registration is closely linked to an array of rights and protections, organizations such as the United Nations Children's Fund also acknowledge that the nature of the link between the two requires more research.

This report argues that a complex interaction of powerful social, economic, political, and cultural forces enable violations of children's rights, and that legal identity alone cannot serve as a panacea





for what is a very complicated problem. Several factors prevent legal identity from providing salient solutions to human rights issues:

- Child marriage and child labor continue to violate children's rights because of the social and economic factors that allow these practices to continue. Providing legal identity can only go so far in addressing these problems that seem firmly entrenched in the norms of several societies.
  - The legal system often does not uphold human rights laws even when legal identity is not in question. Therefore, without complementary institutional reforms, possessing some form of legal identity alone is unlikely to protect minors' rights.
- The wide availability of fake legal identity documents such as birth certificates has affected the integrity of real documents. Thus, courts and other agencies often use alternative means—such as medical examination or testimony by neighbors, friends, and family—to establish age.

#### DEMOGRAPHIC STATISTICS FOR DEVELOPMENT PLANNING

Civil registration systems may enable government agencies to properly plan and define development priorities by providing exact demographic statistics. Such up-to-date demographic information provides a sound basis for the allocation of resources and benefits, especially for vulnerable and distressed communities.

However, several factors hinder the promised advantages of civil registration in this regard:

- Low registration rates, particularly in rural areas and among the uneducated and impoverished, make it impossible to plan based on vital statistics. Development planning based on these skewed statistics could actually have the perverse result of directing resources away from where they are most needed, as the people most in need of government assistance—the poor, those who lack education, and those who live in rural areas—tend to be the very people who are least likely to register. Therefore, unless registration rates are close to 100%, the value of birth registration for development planning is limited.
- The lack of standardized mechanisms to collect, document, transmit, store, consolidate, and analyze data that local registrars collect makes accurate statistical projections difficult. Poor coordination at the national and subnational levels among various government agencies exacerbates local inconsistencies and incompleteness.

- The production of accurate and complete statistics does not ensure the allocation of resources to the most vulnerable. Competing demands for scarce resources constrain resource distribution. This is further hampered by power politics and special interests, which interfere with the abilities of decision makers to make honest appraisals of the most pressing needs and to execute policies based on empirically driven analysis.

## OBSTACLES TO REGISTRATION

A range of obstacles and challenges, including financial barriers, burdensome procedures, discriminatory laws and practices, institutional deficiencies, and a lack of adequate information about the benefits of legal identity, all serve to discourage people, especially the most vulnerable groups, from attempting to register themselves and their families:

**Costs of Registration:** In the three countries that are the subject of the research, a range of financial costs—including official fees, fines for late registrations, transportation expenses, bribes, and the opportunity costs for taking time away from work—contributes to deterring registrations, particularly among the poor. Fines, travel expenses, and lost work wages all exacerbate the official costs of registration, particularly for the rural poor who often cannot make it to the registration sites within the time allotted by law, and face fines when they fail to do so.

**Cumbersome Registration Procedures:** Burdensome procedures, including confusing and incoherent bureaucratic hurdles, as well as stringent evidentiary requirements, add to the mix of discouraging factors.

**Discrimination:** Discriminatory laws, practices, and attitudes toward registrants, particularly women and minorities, create further difficulties

and discourage potential registrants. Citizenship, birth registration, marriage and inheritance laws that contain discriminatory provisions undermine the goals of universal registration. Attitudes and beliefs that might be displayed by officers in charge of registration further deter registration. Single mothers, transsexuals, rural people, *dalits*, and ethnic minorities generally face higher levels of harassment. Consequently, the highest rates of non-registration are among women and other disadvantaged groups, such as indigenous communities. Single mothers face a particularly difficult task in registering themselves or their children.

**Implementation Costs:** The limited state capacity to deliver civil registration services serves as a fundamental barrier to establishing legal identity. Establishing and maintaining a complete, effective, and accessible civil registration system require sufficient resources, political priority, enforcement capacity, and administrative infrastructure, most of which are lacking in the three countries studied. Competing demands over scarce resources often result in the civil registration system being given low priority. This affects the system's capacity to handle registrants competently.

**Public Awareness:** Another consistent impediment to registration is the lack of basic knowledge, capacity, and motivation on the part of potential registrants. While outreach campaigns and other awareness-raising and education activities can compensate for some of these, many people will remain unmotivated to register unless there are obvious payoffs to doing

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so. This is particularly the case for vulnerable groups. Besides lacking knowledge on the existence of registration laws and

procedures, many people, particularly rural populations and ethnic minorities, cannot complete the registration process without step-by-step assistance because of high rates of illiteracy and language barriers.

#### **Perceived Value of Registering:**

Perceptions that the benefits of legal identity are speculative and seemingly remote from people's daily experience also diminish their motivation to register. Some segments of society have very strong disincentives to register, such as those nearing mandatory retirement age who are seeking to remain employable longer. Some religious and racial minorities even fear registering out of concern that official record keeping could enable discriminatory treatment.

### **PUBLIC DEMAND FOR LEGAL IDENTITY AND THE OPERATION OF ALTERNATIVE MARKETS**

**P**ublic demand for legal identity documents depends on a rational calculation that compares the perceived benefits of obtaining identity documents to the perceived registration costs.

If, based on this evaluation, the costs of identity documents outweigh the benefits, individuals will naturally be disinclined to register. If the benefits outweigh the costs, identity documents will be desirable. However, if less expensive, more accessible, and equally effective substitutes are available, many will opt for alternatives. These alternatives, which vary in terms of legality, include legitimate

substitutes and documents obtained through alternative or "black" markets.

The existence of an alternative market is perhaps the truest gauge of public demand for legal identity. Each of the three countries researched has an alternative market, although the degree of sophistication and robustness of these markets' activities varies. A robust and thriving alternative market, such as the one for citizenship certificates in Nepal, indicates that identity documents are very valuable and, at the same time, difficult to obtain. On the other hand, very modest black market activity for identity documents, as is the case in Cambodia, may be directly related to the government's flexible practice of accepting a variety of identity documents. In Bangladesh, alternative market activity for birth certificates has been virtually nonexistent because of the availability and acceptance of alternative forms of identification, as well as the lack of legal requirements to have a birth certificate to access benefits and opportunities. This is expected to change, however, as Bangladesh's Birth and Death Registration Act of 2004 (or: the 2004 Registration Act) will be fully implemented by the end of 2007. The 2004 Registration Act requires birth certificates to access a wide range of benefits and opportunities. Unintentionally, the 2004 Registration Act may well stimulate alternative market activity.

The research shows that people seek out identity papers in alternative markets for a variety of reasons. Some applicants, who are legally eligible for identity documents, are excluded because of discriminatory treatment or overly burdensome requirements for supporting documentation. Other applicants may need false documentation in order to pursue illicit activities, which could range in seriousness from working beyond mandatory retirement ages, to violent crimes such as human trafficking.

Alternative markets respond to these needs by delivering fast and efficient services through a creative and entrepreneurial network and clear incentive structures. “Fixers” or middle persons work with corrupt bureaucrats and/or criminal rings of counterfeiters to produce illicit identity documentation. The price and prevalence of these services vary, driven up by the urgency of the request, the type of document needed, and the associated risks. While the study is indicative rather than conclusive, the country researchers found that prices are not uniform. Apparently, actors in the alternative market network take advantage of the imperfect information held by consumers of their services. Moreover, country researchers found significant price volatility; generally, rates spike dramatically if the document confers substantial benefits or is very risky to obtain.

Alternative markets present a continuing challenge in implementing legal identity programs. This publication presents a case study of such challenges as they play out in Nepal, where the most robust alternative markets thrive. Despite adequate laws and even special governmental units dedicated to dealing with these activities, the likelihood of detection, prosecution, and conviction is low. The ease of falsification, the low risk of conviction, and the light penalties imposed all contrib-

ute to the continued existence of alternative markets. Challenges to combating alternative markets for identity documents include the lack of systematic record keeping; unsophisticated investigative techniques; inadequate human resources; and the mutually beneficial web of relationships binding politicians, bureaucrats, and black market document brokers to one another.

## CONCLUSIONS

**L**egal identity is a multifaceted issue with potentially far reaching implications, ranging from accessing benefits and opportunities, to human rights protection, to the distribution of public resources. Due to the realities of the developing country



context, however, legal identity often fails to deliver all that it promises. The emerging picture is far more complex and challenging than a conceptual approach suggests. Fundamental obstacles, such as weak institutions and widespread poverty and corruption, limit the concrete value of legal identity. In the context of competing demands for limited resources, the impact of improved access to legal identity, at least for the most vulnerable communities, often remains speculative and remote.

Focusing on these challenges is not intended to be pessimistic, but provides a realistic baseline for those development partners seeking to address the obstacles



and to design programs targeted at improving the lives of vulnerable groups. Decisions about where to invest limited government and donor resources should be grounded in an evidence-based understanding of the problems so that program interventions can be finely tuned to achieve meaningful and cost-effective results.

The following key insights provide some guidance and direction for future involvement of development partners in promoting legal identity:

**Birth certificates are an intermediate, not an ultimate, goal.** Too often programs aimed at increasing civil registrations are based on an inadequate problem analysis that fails to differentiate between intermediate and ultimate outcomes. This research shows that increased access to services, benefits, protections, and opportunities does not automatically flow from the possession of a birth certificate.

**Development partners should be aware of registration requirements when designing development interventions, but at the same time ensure that these interventions do not lead to unintended consequences.** Development partners need to determine if national legal identity requirements could prevent mainstream development projects (e.g. in diverse areas such as health and education, development of small and medium enterprises, and delivery of utility services) from reaching target beneficiaries who lack the necessary documentation. This analysis should be conducted in the project design phase so that mitigating interventions can be incorporated. Development partners should also be aware that well-intentioned, but misguided interventions can generate increased corruption and public cynicism. Supporting registration laws that aim to create demand for registration by making benefits and opportunities contingent on birth certificates, without ensuring that registration offices have the capacity to distribute documents to all citizens, will stimulate the black market; as a result, the groups most in need of these benefits and opportunities may well be further excluded or compelled to pay bribes.

**Complementary reforms are needed to make legal identity meaningful.** The value of a civil registration

document is only as far reaching as the state's capacity to provide services and enforce laws intended to protect citizens' rights. Without complementary reforms, legal identity may make little practical difference in countries characterized by poor governance, weak institutions, and resource constraints. Alone, legal identity documents can accomplish little, but they can be an important part of a larger reform agenda for promoting inclusive development.

**Understanding the country context, including the incentive structure of institutional actors, is essential.** Establishing and maintaining a complete, effective, and accessible civil registration system requires sufficient funding, human resources, political priority, enforcement capacity, and administrative infrastructure. These essential inputs, however, can be hard to come by in the developing country context. Given this reality, technical approaches that work in developed countries cannot necessarily be transferred, unless adjustments are made to address critical issues and impediments.

**Gauging political priority for registrations is essential.** In an environment of competing demands for limited resources, civil registration may be a low priority item, particularly compared to other more urgent and concrete needs. Often the lack of political priority for civil registration is simply a function of insufficient funding to address the host of problems requiring state resources and the lack of powerful constituencies demanding reforms. Public officials may also be gaining from the status quo (e.g. working beyond mandatory retirement ages) and

therefore lack the incentive to push for reforms. Development partners should keep these factors in mind when planning interventions because if there is no political will to implement reforms, then they are not likely to succeed.

**Donor-driven programs may not be sustainable.** International pressure and donor support have engendered an increased level of political priority, domestic attention, and government engagement on the issue of legal identity in the three countries studied. However, the motivation for continuing registration work may end when donor funding dries up. Though dedicated civil servants may continue to power such programs, and perhaps, a "culture of registering" may take root, donors and governments should pay attention to signs that donor-initiated programs may be slowing down, and think creatively about how to sustain them once formal donor involvement comes to an end.

**The sequencing of supply and demand interventions matters.** The sequencing of interventions is particularly important, and reform agendas must carefully consider the dynamics of supply and demand related to legal identity. Unless identity documents serve some higher purpose and have some relevance to people's daily lives, they are unlikely to take the time, money, and effort to register. At the same time, if legislation that strictly requires identity documents to access important services and benefits is imposed, there is a clear and definite risk that instead of promoting inclusive development, legal identity could actually result in exclusion among vulnerable groups who tend to be less likely to register.